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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

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7 THOMAS W. CURTIS,

8 Plaintiff,

9 vs.

10 UNIVERSITY MEDICAL CENTER,

11 Defendant.

Case No. 2:20-cv-02134-KJD-VCF

ORDER

APPLICATION TO PROCEED *IN FORMA PAUPERIS* (EFC NO. 1); APPLICATION TO PROCEED IN FORMA PAUPERIS (EFC NO. 3);

12 Before the Court is pro se plaintiff Thomas W. Curtis's application to proceed *in forma pauperis*
13 (ECF Nos. 1 and 3). Curtis's in forma pauperis application is denied.

14 **DISCUSSION**

15 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or
16 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to
17 pay such fees or give security therefor." If the plaintiff is a "prisoner" as defined by 28 U.S.C. §
18 1915(h), as amended by the Prison Litigation Reform Act ("PLRA"), he remains obligated to pay the
19 entire fee in installments, regardless of whether his action is ultimately dismissed. See 28 U.S.C. §
20 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

21 Under the PLRA, a prisoner seeking leave to proceed IFP must submit a "certified copy of the
22 trust fund account statement (or institutional equivalent) for the prisoner for the six-month period
23 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
24 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial
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1 payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
2 average monthly balance in the account for the past six months, whichever is greater, unless the prisoner
3 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the
4 prisoner must collect subsequent payments, assessed at 20% of the preceding month's income, in any
5 month in which the prisoner's account exceeds \$10, and forward those payments to the Court until the
6 entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

7 The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case
8 law to determine when someone is poor enough to earn IFP status.” *Escobedo v. Applebees*, 787 F.3d
9 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees
10 but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself
11 with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). The
12 applicant's affidavit must state the facts regarding the individual's poverty “with some particularity,
13 definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation
14 omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the
15 discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed in
16 forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
17 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he “failed to
18 verify his poverty adequately”). If the court determines that an individual's allegation of poverty is
19 untrue, “it shall dismiss the case.” 28 U.S.C. § 1915(e)(2).

21 The District of Nevada has adopted three types of IFP applications: a “Prisoner Form” for
22 incarcerated persons and a “Short Form” (AO 240) and “Long Form” (AO 239) for non-incarcerated
23 persons. The financial information and affidavit required for prisoners differs from the Short and Long
24 Forms for non-incarcerated individuals. The Long Form requires more detailed information than the
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1 Short Form. The court typically does not order an applicant to submit the Long Form unless the Short
2 Form is inadequate, or it appears that the plaintiff is concealing information about his income for
3 determining whether the applicant qualifies for IFP status. When an applicant is specifically ordered to
4 submit the Long Form, the correct form must be submitted, and the applicant must provide all the
5 information requested in the Long Form so that the court is able to make a fact finding regarding the
6 applicant's financial status. See e.g. *Greco v. NYE Cty. Dist. Jude Robert Lane*, No.
7 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov. 9, 2016), report and recommendation
8 adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL, 2016 WL 7493963 (D. Nev. Dec. 30,
9 2016).

10 Plaintiff Curtis simultaneously filed two cases in this Court and has requested the privilege to
11 proceed IFP in both cases. See 2:20-cv-02127-RFB-VCF, *Curtis v. Hilton Hotel Inc.*, pending before the
12 Court. In plaintiff's case against the Hilton Hotel, however, he lists a home address in Pahrump, and he
13 does not mention that he is incarcerated. In the instant case, Curtis did not initially file an IFP form, but
14 he filed an amended complaint and an amended IFP application that states that he is incarcerated. See
15 ECF Nos. 1 and 3 at 1.
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17 While plaintiff did attach a copy of his trust fund account statement (or institutional equivalent)
18 from Lakes Crossing Center dating back a few months, the account statement he filed is not compliant
19 with the PLRA because it is not a certified copy. (ECF No. 3 at 2). Plaintiff must obtain an updated and
20 certified account statement. Plaintiffs' application to proceed in forma pauperis is denied without
21 prejudice. The Court will give plaintiff 30 days to file an updated application with a certified copy of his
22 trust fund account statement. Since the Court denies plaintiff's IFP application, it does not screen his
23 complaint now.
24

25 ACCORDINGLY,

1 IT IS ORDERED that Curtis's applications to proceed in forma pauperis (ECF Nos. 1 and 3) are
2 DENIED.

3 IT IS FURTHER ORDERED that Curtis has until Thursday, February 4, 2021 to file an updated
4 IFP application as specified in this order. Failure to timely comply with this Order may result in a
5 recommendation for dismissal with prejudice.

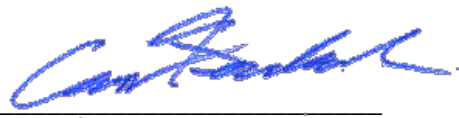
6 **NOTICE**

7 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
8 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
9 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
10 may determine that an appeal has been waived due to the failure to file objections within the specified
11 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

12 This circuit has also held that (1) failure to file objections within the specified time and (2)
13 failure to properly address and brief the objectionable issues waives the right to appeal the District
14 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
15 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
16 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
17 change of address. The notification must include proof of service upon each opposing party's attorney,
18 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
19 result in dismissal of the action.
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21 IT IS SO ORDERED.

22 DATED this 5th day of January 2021.

23 
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE